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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,650	12/28/2001	Lisa Bushman	KCC 4801 (K. C. No. 16,90	4610

321 7590 09/27/2007

SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER	
STEPHENS, JACQUELINE F	
ART UNIT	**PAPER NUMBER**
3761	

NOTIFICATION DATE	DELIVERY MODE
09/27/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

Office Action Summary	Application No.	Applicant(s)	
	10/035,650	BUSHMAN ET AL.	
	Examiner	Art Unit	
	Jacqueline F. Stephens	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 July 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 4-42* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *4-10,23-39 and 41* is/are allowed.

6)☒ Claim(s) *1,11-22,40 and 42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1 and 42 have been considered but are not persuasive. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Examiner has relied on Boland to teach a stretchable backsheet. The motivation for providing Freeland with a stretchable backsheet is found in Boland who teaches the stretchable backsheet is beneficial for providing a fit on a variety of users. The fact that Freeland teaches this is also desirable reiterates the propriety of the combination of references.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 11-22, 40, and 42 are rejected under 35 U.S.C. 103(a) as being obvious over Freeland et al. USPN 5269775 in view of Boland et al. USPN 4710187.

As to claims 1, 11-21, and 42, Freeland teaches a topsheet that is resiliently stretchable so that in use a gap is formed between the topsheet and the absorbent body (Abstract, Figure 3). Freeland does not disclose the backsheet is also stretchable. Boland discloses an absorbent article having a stretchable topsheet and backsheet for the benefits of allowing the diaper to self-adjust to the various shapes and forms of various babies caused by different anatomical features such as varying stomach and thigh sizes (col. 4, lines 35-44). One having ordinary skill in the art would have been motivated by the teaching of Boland to modify the invention of Freeland with a stretchable backsheet for the benefits Boland teaches.

The combination of Freeland/Boland provides a diaper with a stretchable topsheet and backsheet. The extensibility of the outer covers allows them to expand with the expansion of the absorbent core when wetted. Freeland/Boland does not disclose the backsheet and the topsheet are adapted to stretch differing amounts where a first amount of stretch of the backsheet is greater than a second amount of stretch of the topsheet or that the topsheet is more resilient. However, Freeland/Boland teaches the topsheet forms a gap between the topsheet and the absorbent body (Freeland Figure 3) for the purpose of isolating urine and fecal material from the skin of the wearer, which creates greater user comfort as well as aids in eliminating health problems. The present invention is concerned with creating space between the bodyside liner and absorbent to allow more ventilation of the skin and improve skin health as well. To employ a backsheet that has a higher degree of stretch than the topsheet would have been obvious to one having ordinary skill in the art since Freeland teaches the tautness of the topsheet contributes to the formation of the gap between the topsheet and absorbent article (Freeland col. 4, line 65 through col. 5 line 5; col. 6, line 67 through col. 7, line 3). Retraction force and stretch would have been obvious by optimizing the size of the topsheet and thereby controlling the extensibility of the topsheet.

As to claims 22 and 40, see Figure 3 of Freeland.

Allowable Subject Matter

5. Claims 4-10, 23-39, and 41 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to 0 whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Primary Examiner
Art Unit 3761

September 4, 2007